GULAM MURBANTH

v.

LOO KIM CHAN

HIGH COURT MALAYA, KUALA LUMPUR
MOHD. DZAIDDIN J
[CIVIL SUIT NO. P613 OF 1980]
11 MARCH 1983

DAMAGES: *Both plaintiff and defendant equally liable for the accident - Liability 50/50.*

The Court found both the plaintiff and defendant equally to be blamed for the negligence in this running-down case. The plaintiff suffered the following injuries:

(1) a laceration over the right thigh and leg cutting across muscles;

(2) fracture of the medial malleolus of the right ankle.

For pain and suffering and loss of amenities basing on the findings of Dr. Mahmood Merican, the Orthopaedic Surgeon as appears in the judgment below, the Court awarded a lump sum of RM18,000 on 100% liability.

Loss of future earnings

The plaintiff was 62 years old at the time of trial. He was employed as a jaga and also worked as a grasscutter on a contract basis before the accident. There was no loss of earning as a jaga. His expectation of working life was held to be until 65. Deducting the contingencies, a multiplier of 2 years' purchase was given by the Court. Loss of earnings was estimated at RM200 per month and on a multiplier of 2 years the amount was RM4,464.

Special Damages

Special damages was agreed at RM415. Loss of earnings from 3 January 1979 - March 1981 was at RM250 per month; total amount was RM250 x 27 months = RM6,750.

Held:

[1] On 50% basis, judgment for the plaintiff was as follows:

(1) Pain and suffering and loss of amenities	-	RM 9,000.00
(2) Loss of future earnings	-	RM 2,232.00
(3) Loss of earnings (special)	-	RM 3,375.00
(4) Agreed special damages	-	RM 207.50
		RM14,814.50

(5) Interest at 8% per annum on the RM9,000 from date of service of writ.

(6) Interest at 4% per annum for special damages, i.e. loss of earnings from date of accident to date of judgment.

(7) Costs.

[Judgment for plaintiff. Liability: 50/50.]

For the plaintiff - Inderjit Singh; M/s. Inderjit Singh
For the defendant - Y. Sodhy; M/s. Sodhy & Partners

JUDGMENT

Mohd. Dzaiddin J:

In this running-down case, I have found both the plaintiff and the defendant equally to blame for the negligence.

The following is my judgment on damages on 100% liability.

(1) ***For Pain and suffering and loss of amenities.***

The plaintiff suffered the following injuries:

(i) A laceration over the right thigh and leg cutting across muscles.

(ii) Fracture of the medical malleolus of the right ankle.

He was subsequently seen by Dr. Mahmood Merican, the Orthopaedic Surgeon. On examination, his findings are as follows:

(1) He walked with a limp mainly because of a right dropfoot.

(2) There was an irregularly scarred area with grafted skin over the whole of the back of the right leg and knee. This scarred area is about 15" x 8". The leg is out of shape because of loss of part of the calf muscles.

(3) There was a scar 3½" long over the medical malleolus. The right ankle was slightly swollen. The foot was held plantar-flexed and could not be raised above the position of 15° plantarflexion. The movements of turning the foot inwards and outwards were restricted to about two-thirds the normal range.

(4) There were scarred strips over the front and medial aspect of the left thigh over an area 10" x 9" where skin had been removed for grafting.

(5) X-rays of the right ankle showed a fracture of the medial malleolus which had united with a screw in place.

In the opinion of the Specialist, the scars, the deformity of the right leg, the right dropfoot and restriction of movements at the right ankle resulted from these injuries are likely to be permanent. The scarring and deformed shape of the right leg are obvious. The dropfoot causes a limp and interferes with activities such as squatting, climbing or running. Osteoarthritis is likely to develop at the right ankle. Having considered the injuries as a whole including the question of overlapping, I award a lump sum of RM18,000 under this heading.

(2) ***Loss of future earnings.***

The plaintiff was aged 62 years old at the time of trial. He appears to me to be a healthy man and has been employed as a jaga. There was no loss of earning as a jaga. However, before the accident, he also worked as a grasscutter on a contract basis with Majuternak which has closed down its operation since March 1981. However, had it not been for the accident, he would have continued to work as a grasscutter but not necessarily be employed by Majuternak. I expect him to continue working until 65 and, as such, his expectation of working life would be only for three years. Deducting the contingencies, I would give a

multiplier of two years' purchase; and on the basis of his past average earnings as a grasscutter and the fact that his earning would be affected by the closing down of Majuternak, I estimate his loss of earnings at RM200 per month. On a multiplier of two years, the amount would be RM4,464.

(3) ***Special damages.***

With regard to special damages, both parties agreed to the sum of RM415. However, as for loss of earnings from 3 January 1979 until March 1981, I have to assess the average monthly income of the plaintiff. From the evidence of an official of Majuternak (PW3) and from the statement of payments made by Majuternak as in Exhibit P6, it is my finding that the average income of the plaintiff would be RM250 per month. Therefore, the total amount would be RM250 x 27 months = RM6,750.

Judgment for the plaintiff on 50% basis will be as follows:

(1) Pain and suffering and loss of amenities	-	RM 9,000.00
(2) Loss of future earnings	-	RM 2,232.00
(3) Loss of earnings (special)	-	RM 3,375.00
(4) Agreed special damage	-	RM 207.50
		RM14,814.50

(5) Interest on item (1) at 8% per annum from date of service of writ.

(6) No interest for loss of future earnings.

(7) 4% per annum for special damages, i.e. loss of earnings from date of accident to date of judgment.

(8) Costs.

Also found at [1983] 1 CLJ 301